

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Raphael Mendez,

Plaintiff,

v.

Mr. Gilk, et al.,

Defendants.

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**ORDER**

Civil 14-4528 ADM/FLN

On December 11, 2014, Magistrate Judge Noel issued a Report and Recommendation (“R&R”) [Docket No. 7] dismissing Mendez’s action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Objections to the R&R were due on December 26, 2014.

On December 22, 2014, Mendez filed a Request to Stay R&R [Docket No. 9]. Mendez’s Request is based on his letter to the U. S. Attorney’s Office requesting criminal prosecution against the Federal Medical Center in Rochester, Minnesota—the facility where Mendez is a civil detainee. Decisions to prosecute and what charges to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion. U.S. v. Batchelder, 442 U.S. 114, 124 (1979). Mendez’s letter requesting criminal prosecution does not justify staying the R&R.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United States Magistrate Judge Franklin L. Noel dated December 11, 2014, all the files and records, and no objections having been filed to said R&R,

**IT IS HEREBY ORDERED** that

1. The Request to Stay R&R [Docket No. 9] is **DENIED**;
2. Judge Noels’s December 11, 2014 R&R [Docket No. 7] is **ADOPTED**.
3. Plaintiff’s application for leave to proceed in forma pauperis [Docket No. 2] is **DENIED**; and

4. This action is summarily **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) without prejudice.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: January 6, 2015.